

# United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	James B. Zagel	Sitting Judge if Other than Assigned Judge	
CASE NUMBER	04 C 3822	DATE	10/21/2004
CASE TITLE	STRENK vs. TYCO		

[In the following box (a) indicate the party filing the motion, e.g., plaintiff, defendant, 3rd party plaintiff, and (b) state briefly the nature of the motion being presented.]

## MOTION:

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## DOCKET ENTRY:

(1)	<input type="checkbox"/>	Filed motion of [ use listing in "Motion" box above.]
(2)	<input type="checkbox"/>	Brief in support of motion due _____.
(3)	<input type="checkbox"/>	Answer brief to motion due _____. Reply to answer brief due _____.
(4)	<input type="checkbox"/>	Ruling/Hearing on _____ set for _____ at _____.
(5)	<input type="checkbox"/>	Status hearing[held/continued to] [set for/re-set for] on _____ set for _____ at _____.
(6)	<input type="checkbox"/>	Pretrial conference[held/continued to] [set for/re-set for] on _____ set for _____ at _____.
(7)	<input type="checkbox"/>	Trial[set for/re-set for] on _____ at _____.
(8)	<input type="checkbox"/>	[Bench/Jury trial] [Hearing] held/continued to _____ at _____.
(9)	<input type="checkbox"/>	This case is dismissed [with/without] prejudice and without costs[by/agreement/pursuant to] <input type="checkbox"/> FRCP4(m) <input type="checkbox"/> Local Rule 41.1 <input type="checkbox"/> FRCP41(a)(1) <input type="checkbox"/> FRCP41(a)(2).
(10)	<input checked="" type="checkbox"/>	[Other docket entry]   Motion (5-1) to dismiss is granted in part and denied in part.   Enter memorandum opinion and order.
(11)	<input checked="" type="checkbox"/>	[For further detail see order attached to the original minute order.]

<input type="checkbox"/> No notices required, advised in open court. <input type="checkbox"/> No notices required. <input type="checkbox"/> Notices mailed by judge's staff. <input type="checkbox"/> Notified counsel by telephone. <input checked="" type="checkbox"/> Docketing to mail notices. <input type="checkbox"/> Mail AO 450 form. <input type="checkbox"/> Copy to judge/magistrate judge.	courtroom deputy's initials  DW	U.S. DISTRICT COURT 27 PM 7:03 Date/time received in central Clerk's Office	number of notices	Document Number  9
			OCT 28 2004	
			date docketed	
			ALR docketing deputy initials	
			date mailed notice	
			mailing deputy initials	

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

JAMES J. STRENK,

Plaintiff,

v.

TYCO DEFERRED COMPENSATION  
PLAN, ADMINISTRATIVE COMMITTEE  
OF THE TYCO DEFERRED  
COMPENSATION PLAN, TME  
MANAGEMENT CORP., TYCO  
INTERNATIONAL LTD. and ALLIED  
TUBE & CONDUIT CORP.,

Defendants.

**DOCKETED**  
OCT 28 2004

No. 04 C 3822  
Judge James B. Zagel

**MEMORANDUM OPINION AND ORDER**

On June 4, 2004, Plaintiff James J. Strenk filed suit alleging that Defendant Tyco Deferred Compensation Plan ("Plan"), pursuant to a decision made by Defendant Administrative Committee of the Tyco Deferred Compensation Plan ("Committee"), wrongfully refused to waive penalties for early withdrawal under the deferred compensation plan's "unforeseeable financial emergency" provision. The deferred compensation plan is administered by the Committee and is sponsored by Defendants TME Management Corp. ("TME"), Tyco International Ltd. ("Tyco"), and Allied Tube & Conduit Corp. ("Allied"). In this suit, Plaintiff is seeking the money withheld from his account balance to pay the early withdrawal penalties plus any resulting interest.

The Committee, TME, Tyco, and Allied (the "non-Plan Defendants") have moved to dismiss all counts of the Complaint against them arguing that the Plan is the only permissible defendant under § 502(a)(1)(B) of the Employee Retirement Income Security Act of 1974

(“ERISA”). See 29 U.S.C. § 1132(a)(1)(B). The Seventh Circuit has repeatedly held that “ERISA permits suits to recover benefits only against the Plan as an entity.” *Neuma, Inc. v. AMP, Inc.*, 259 F.3d 864, 872 n.4 (7<sup>th</sup> Cir. 2001) (quoting *Jass v. Prudential Health Care Plan, Inc.*, 88 F.3d 1482, 1490 (7<sup>th</sup> Cir. 1996); See Also *Mein v. Carus Corp.*, 241 F.3d 581 (7<sup>th</sup> Cir. 2001); *Garratt v. Knowles*, 245 F.3d 941, 949 (7<sup>th</sup> Cir. 2001). Although this rule is generally enforced, courts have made exceptions in cases where the plaintiff is seeking equitable relief, the employer is alleged to be the plan administrator and agent for service purposes, and the employer and the plan are closely intertwined. *Penrose v. Hartford Life & Accident Ins. Co.*, 2003 U.S. Dist. LEXIS 13497 at \*9 (N.D. Ill. Aug. 4, 2003).

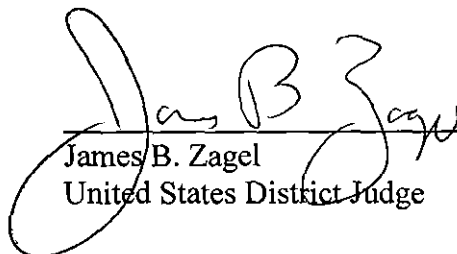
Only the exception made for an “intertwined” non-plan defendant is applicable here. The strongest case for naming a non-plan defendant exists for the Committee, which is the body responsible for administering the deferred compensation plan. Under the plan, the Committee has the authority to resolve and did actually resolve Plaintiff’s questions concerning interpretation of the deferred compensation plan. See P. Ex. A, §12.1. The Committee is also authorized to make any payments directed by court order in which the Plan or the Committee has been named as a party. See P. Ex. A, §16.41. Since the Committee has been actively involved with the decision making processes within the deferred compensation plan, I find it has become adequately intertwined with the Plan to justify naming the Committee as a defendant in this case. See *Mein*, 241 F.3d at 585; *Penrose*, 2003 U.S. Dist LEXIS 13497 at \*15.

The case for naming Plaintiff’s former employer, Allied, as a defendant is minimal at best. Plaintiff does not allege that Allied was substantively involved with the deferred compensation plan’s daily administration and decision making processes. Plaintiff alleges only

that Allied withheld compensation from his paychecks. This sort of minimal administrative involvement with the deferred compensation plan does not create grounds for naming Allied as a defendant. Equally weak is the argument for naming Tyco and TME as defendants. Tyco and TME merely provide the funds for payment in accordance with decisions made by the Plan and the Committee. Tyco's and TME's responsibilities are not such that they substantively involve either entity with the Plan or the Committee. Furthermore, it does not appear from the pleadings that a direct action against Tyco and TME would be necessary since there is no indication that the Plan is underfunded or that the Plan will refuse to pay a judgment properly awarded by this court.

For these reasons, the non-Plan Defendants' Motion to Dismiss is GRANTED as to Allied, Tyco and TME and is DENIED as to the Committee.

ENTER:

  
James B. Zagel  
United States District Judge

DATE: 21 Oct 2004